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SUPREME COURT, U.S.
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CHARLES ELMORE CROPLEY

No. 287

In the Supreme Court of the United States

October Term, 1939

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In the Supreme Court of the United States

OCTOBER TERM, 1940

No. 287

EARL RUSSELL BROWDER, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the Circuit Court of Appeals (R. 399–403) is reported in 113 F. (2d) 97.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered June 28, 1940 (R. 403–404). The petition for a writ of certiorari was filed July 29, 1940, and was granted on October 14, 1940. The jurisdiction of this Court is conferred by Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925. See also Rule 11 of the Criminal Appeals Rules promulgated by this Court May 7, 1934.

QUESTIONS PRESENTED

1. Whether the statute making criminal the willful and knowing "use" of "any passport the issue of which was secured in any way by reason of any false statement" (U. S. C., Title 22, Section 220) applies to the use of a passport at a port of entry, as proof of citizenship, by a citizen of the United States returning from abroad.

2. Whether there was sufficient evidence to permit the jury to find that petitioner's use of the passport was "willful" within the meaning of the statute.

STATUTE INVOLVED

Section 2 of Title IX of the Espionage Act of June 15, 1917, c. 30, 40 Stat. 227 (United States Code, Title 22, Sec. 220) provides:

> Whoever shall willfully and knowingly make any false statement in an application for passport with intent to induce or secure the issuance of a passport under the authority of the United States, either for his own use or the use of another, contrary to the laws regulating the issuance of passports or the rules prescribed pursuant to such laws, or whoever shall willfully and knowingly use or attempt to use, or furnish to another for use, any passport the issue of which was secured in any way by reason of any false statement, shall be fined not more than $2,000 or imprisoned not more than five years or both.

The full text of Title IX of the Espionage Act of June 15, 1917 (United States Code, Title 22, Secs. 213, 220, 221, 222), is set forth in Appendix A, *infra*, pp. 44–45.

STATEMENT

Petitioner was indicted on November 17, 1939, in the United States District Court for the Southern District of New York. The indictment was in two counts. The first count charged that the petitioner, having secured a passport by reason of false statement to the effect that he had had no previous passport, wilfully and knowingly used the passport on April 30, 1937, by presenting it to an immigrant inspector to secure entry into the United States (R. 2–3). The second count charged the petitioner with a similar use of the same passport on February 15, 1938 (R. 4–5). Petitioner was convicted on both counts on January 22, 1940 (R. 301). He was sentenced to imprisonment for four years and fined $2,000; two years' imprisonment and $1,000 fine on each count (R. 378). On appeal to the Circuit Court of Appeals for the Second Circuit the judgment was unanimously affirmed (R. 404).

On August 31, 1934, petitioner submitted the form printed application for a passport at a Passport Agency of the Department of State (Exh. 2, R. 305–306; Exh. 18, R. 348–350; R. 93–94, 97). The application blank contained the clause: "My

last passport was obtained from _____ and is submitted herewith for cancellation."[1] Petitioner wrote the word "None" in the blank space, signed the application (Exh. 18, R. 348–350), and took oath that the statements therein contained were true (R. 75). On September 1, 1934, a United States passport was issued to petitioner on this application (R. 101) and was thereafter obtained by him (R. 102–103, 108).

As issued, the passport was valid for two years, but its validity could be extended for an additional two years from the original expiration date (R. 104). On February 2, 1937, the period of its validity was extended until September 1, 1938, by renewal application made by petitioner (Exh. 6, R. 331; Exh. 18, R. 348–350; R. 86–87; Exh. 5, R. 317).

Petitioner arrived at the port of New York on April 30, 1937, on the *S. S. Berengaria*, having sailed from Cherbourg after a trip abroad (R. 115, Exh. 9, R. 334; R. 116–117; Exh. 11, R. 335; R. 119, 123, 214; Exh. 5, R. 326). Again, on February 15, 1938, he arrived on the *S. S. Aquitania*, also having sailed from Cherbourg (R. 115; Exh. 10, R. 334; R. 116–117; Exh. 12, R. 336; R. 125,

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[1] The form appeared as follows (Exh. 2, R. 305):

"My last passport was obtained from _____
(Insert Washington or location of office abroad)
on _____ and is submitted herewith for cancellation
(Date)
_____
(Give disposition of passport, if it cannot be submitted)

129, 214). On both occasions he used his passport to identify himself and to establish to the satisfaction of the immigrant inspector his citizenship and consequent right to enter the United States (R. 119–122, 125, 127; Exh. 5, R. 316).

Although petitioner had answered "None" to the question on his passport application concerning the obtaining of his last passport, actually he had previously obtained by fraud three other United States passports in names not his own (Exh. 4, R. 311–312; R. 134–135, 143–147; Exh. 16, R. 343–344; Exh. 16A, R. 345; R. 170, 150–161; Exh. 3A, R. 309–310; R. 189–190, 196–197, 216).

On March 10, 1921, petitioner, assuming the identity of one Nicholas Dozenberg, applied for a passport at the agency of the Department of State at New York (Exh. 4, R. 311–312; R. 134–135, 143–147, 216). To accomplish this end petitioner induced the perjury of a woman who asserted she was Katherine Dozenberg, his wife, and served as identifying witness (Ex. 4, R. 312). As proof of citizenship, petitioner submitted a naturalization certificate issued to Nicholas Dozenberg (R. 147). Petitioner swore to the truth of the statements in the application, including assertions of birth in Lativia and subsequent naturalization in Boston (Exh. 4, R. 311–312; R. 216). A passport was issued on this application, obtained by petitioner (R. 144–146) and subsequently used (R. 134, 184, 186, 58, 96).

In 1927 petitioner fraudulently obtained a second passport (Exh. 16, R. 343–344, Exh. 16A, R. 345; R. 150–161, 170, 216). On this occasion he assumed the name "George Morris." As proof of citizenship, he submitted an affidavit asserting that he was born in New York City, the son of "Martha Morris" (Exh. 16A, R. 345; R. 164). Petitioner procured the perjury of one Powers, who, acting as identifying witness on the application, swore that he had known "George Morris" for five years and that the facts stated in petitioner's application under that name were true (Exh. 16, R. 343–344; R. 152, 164).

On this application, as on the application which petitioner made in 1934 in his own name, petitioner concealed the fact that he had previously obtained a passport in the name of Dozenberg, and wrote the word "None" in the space provided for the applicant's previous passport history (Exh. 2, R. 305; Exh. 16, R. 343; R. 216).

Petitioner's obtaining of a passport in the name of George Morris precipitated an investigation (R. 173–174). There is no evidence that petitioner ever applied for a renewal of the passport in that name.

In 1933 petitioner fraudulently obtained a third passport, this time under the name Albert Henry Richards (Exh. 3A, R. 309–310; R. 189–190, 196–197, 216). As proof of citizenship on that occasion, petitioner submitted, as his own, the birth certifi-

cate of Albert Henry Richards, born in Oshkosh, Wisconsin (Exh. 3A, R. 309; R. 193). Again, petitioner answered the question with respect to his last passport with the word "None" (Exh. 3A, R. 309; R. 192–193). On November 19, 1931, a passport bearing petitioner's photograph and the name Albert Henry Richards was issued (Exh. 3A, R. 310; R. 96, 190, 196). This passport was used by petitioner (R. 187–188, 58, 96).

On November 9, 1933, petitioner renewed the passport in the name of Albert Henry Richards at the Passport Agency in Chicago, so that its validity was extended for an additional two years from the date of issue (Exh. 3, R. 307–308; R. 197, 216).

As a result, for more than fourteen months, between September 1, 1934, the date of the issuance of the passport in petitioner's own name, and November 18, 1935, the expiration date of the renewed passport obtained by petitioner in the name of Albert Henry Richards, petitioner, contrary to law (R. 197–199) had two United States passports.

At the conclusion of the Government's case petitioner rested. No evidence was introduced to contradict that offered by the Government.

At the opening of the trial (R. 15), and again at the close of the evidence (R. 226–236), petitioner moved to dismiss the indictment and excepted to the denial of the motion. He contended below, as

he does here, that the use of the passport alleged and proved is not a "use" prohibited by the statute; and that there is no evidence that the passport was used "willfully" within the meaning of the statute.

SUMMARY OF ARGUMENT

I

The exhibition of a fraudulently obtained passport to establish the bearer's right to enter the United States as a citizen upon returning from abroad is a "use" within the meaning of Section 2 of Title IX of the Espionage Act of 1917. The plain language of the statute must be taken to mean that Congress intended, at the very least, to punish those uses of fraudulently obtained, forged, altered, and transferred passports which are customarily incident to travel and which fall within the ambit of the ordinary incentives for obtaining passports by deceit and for forging, altering, or transferring them. The State Department has recognized that the presentation of a passport to establish citizenship upon return from abroad is one of the ordinary functions of a passport. There is no basis for the petitioner's contention that the statute applies only to uses which are "fraudulent" in themselves, in the sense that they involve a false representation of fact, since the evident theory of the statute is to strengthen the prohibitions against fraudulently obtaining pass-

ports by punishing uses which are within the ordinary incentives for obtaining them by fraud.

The cognate sections of the statute do not support the petitioner's interpretation. That the immigration authorities tolerate the use of an expired passport to establish citizenship upon returning from Canada, Bermuda, or Mexico, does not establish that the presentation of a passport to obtain entry is not a "use" within the meaning of the provisions (U. S. C., Title 22, Secs. 221, 222) prohibiting the use of passports "in violation of the conditions or restrictions therein contained" or the use of a "passport validly issued which has become void by the occurrence of any condition therein prescribed invalidating the same". It is at least arguable that these provisions apply only to passports used in violation of special emergency conditions imposed by the State Department and not to those invalidated by the ordinary time limitation. On the other hand, a measure of liability which excludes a use of a passport to obtain entry to the United States would create, as one of many absurd consequences, an immunity for an alien employing an American passport acquired by fraud to effect an illegal entry. It is difficult to believe that Congress, legislating after two months of war, intended to reach an American citizen who exhibited a fraudulently obtained passport abroad but did not intend to reach a foreign agent who first exhibited a fraudulent passport upon arrival at an American port.

The use of a passport to pass a port of the United States upon return from abroad is a use "*qua* passport." The petitioner's argument that it is not relies upon definitions of the function of a passport which were formulated before passports were commonly required anywhere and before the Immigration Act of 1917 (39 Stat. 874) imposed a general restriction upon entry to the United States. The argument exhibits the danger of finding the essence of a thing in its historic origin alone. Petitioner's use of the passport was a use to pass a port. It was a use *qua* passport within the meaning of any definition which takes account of the facts of life.

Even if passports were not commonly used to facilitate reentry when the statute was passed, it would not follow that the statute is inapplicable now that such a use is concededly common and recognized. The Circuit Court of Appeals correctly ruled that "the meaning of a statute does not change save as it may be amended; but a statute is prospective and its application to a given state of facts may change as new things or new uses of old things come into existence." See also *De Lima* v. *Bidwell*, 182 U. S. 1, 197; *Puerto Rico* v. *Shell Co.*, 302 U. S. 253; *Van Camp & Sons* v. *American Can Co.*, 278 U. S. 245, 253; *United States* v. *Mosely*, 238 U. S. 383, 388. Not even an administrative construction followed by the reenactment of the statute would preclude the power to change the administrative interpretation at least prospectively. Cf. *Hel-*

vering v. *Wilshire Oil Co.*, 308 U. S. 90, 100; *Morrissey* v. *Commissioner*, 296 U. S. 344, 354. Hence the presence since 1929 in the State Department's "Notice to Bearers of Passports" of the statement that a passport "will enable the holder to establish his American citizenship upon his return to the United States and thus facilitate his entry" would, in itself, be fatal to the petitioner's claim.

Similar considerations refute the contention that the statute is inapplicable because the prehistory of the Espionage Act shows that Congress was concerned with the use of fraudulently obtained or false American passports to penetrate belligerent lines rather than with the use of such passports to enter the United States. Moreover, Congress was not indifferent to the use of such passports by American citizens to enter the United States. This is indicated by the Act of May 22, 1918, c. 81, 40 Stat. 559 (U. S. C., Title 22, Secs. 223–226), a statute regarded as supplementary to the Espionage Act, which for a limited time made it unlawful for citizens to depart from or enter the United States without a valid passport. It is also indicated by documents in the files of the State Department which establish the concern of the administration, prior to the passage of the Espionage Act, with abuses of American passports in entering the United States.

Even if Congress had been primarily concerned about the use of American passports abroad, it must

have recognized the almost certain presumption that a person arriving from abroad who uses a passport to identify himself as an American citizen must also have used the passport abroad; and, further, that it is a virtual impossibility to prove the use abroad, especially in time of war. It is reasonable to suppose, therefore, that Congress would have intended to attach the sanction to a use which is readily susceptible of proof, if only because it is satisfactorily indicative of the uses which cannot be proved.

Finally, the statute is not inapplicable because the petitioner could presumably have established in other ways the conceded fact that he is a citizen. If it were, a citizen who presented a fraudulently obtained passport to invoke diplomatic protection abroad would not violate the statute because he could have established his citizenship and entitled himself to protection in other ways. The statute strikes not at the end for which the passport is used but at its use as a means.

II

Petitioner argues that his use of the passport to obtain immediate entry to the country was not "willful" within the meaning of the statute. We doubt that the question is properly before the Court. In any event, the evidence sufficed to establish a "willful" use. The word "willfully," when employed in a criminal statute, does not have a stereo-

type meaning and, in no event, means that the prohibited act must be done with an ulterior, evil end. In *United States* v. *Murdock*, 290 U. S. 389, upon which petitioner mainly relies, this Court held that it was relevant to a defense that the prohibited act was done in reliance upon an affirmative belief in its legality. There is no evidence in the present case that the defendant acted with such a belief and the evidence of his previous conduct with respect to the obtaining and using of passports precluded a finding that he was attentive to the question of legality until after the institution of the present prosecution. The issue of mistake of law accordingly did not arise and there was no evidence of mistake of fact. The petitioner rests his claim on the simple ground that he could have accomplished lawfully what he chose to accomplish unlawfully. Nothing in the decisions interpreting the word "willfully" as used in various penal statutes sustains the availability of this defense.

ARGUMENT

I

THE PRESENTATION OF A FRAUDULENTLY OBTAINED PASSPORT BY A CITIZEN OF THE UNITED STATES TO ESTABLISH HIS CITIZENSHIP AT A PORT OF ENTRY UPON RETURNING FROM ABROAD IS A "USE" WITHIN THE MEANING OF THE STATUTE

The Circuit Court of Appeals held that the presentation of the fraudulently obtained passport by a citizen of the United States to establish his citizen-

ship upon returning from abroad is a "use" of the passport within the meaning of Section 2 of Title IX of the Espionage Act of June 15, 1917, c. 30, 40 Stat. 227 (U. S. C., Title 22, Sec. 220). We contend that its decision was correct.

First: Section 2 of the Espionage Act makes it a crime willfully and knowingly to make any false statement in an application for a United States passport, with intent to secure its issuance in violation of law or regulation and willfully and knowingly to "use or attempt to use, or furnish to another for use, any passport the issuance of which was secured in any way by reason of any false statement". In plain language, deliberately employed,[2] Congress has declared that no one shall attempt to obtain a passport by deceit, or, having succeeded, shall profit from the deceit by making use of the passport or by furnishing it to another for use. Cognate sections provide that a passport shall not be used in violation of the conditions or regula-

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[2] The House Committee report stated with respect to that portion of the Act of which Section 220 is a part: "The remaining sections of the title are self-explanatory * * *. The committee feel that all the remaining sections of the amended bill are drawn with sufficient clearness to be self-explanatory * * *." H. Rep. No. 30, 65th Cong., 1st Sess., p. 10 (Petitioner's Brief, Appendix, p. 26).

Both the first and second conference reports state that no material change was made in conference in the provisions of the bill relating to passports (H. Rep. Nos. 65 and 69, 65th Cong., 1st Sess.) and there is nothing in the legislative history which suggests that any of the language of these provisions was employed in any restrictive sense.

tions therein contained; that it shall not be used or furnished for use by someone other than the person for whom it was intended (Sec. 3; U. S. C., Title 22, Sec. 221); that it shall not be forged, counterfeited, mutilated, or altered with intent to use it or to permit its use; and that neither such a false passport nor one which has become void "by the occurrence of any condition therein prescribed invalidating the same" shall be used or furnished for use (Sec. 4; U. S. C., Title 22, Sec. 222). Thus, in every instance where the statute condemns an abuse of the passport which is not itself a use, it goes on to condemn a use of the passport so abused.

In determining the uses which are comprehended within this inclusive prohibition, one must refer to the standard which determines when general statutory language may be held inapplicable to particular situations included within its ordinary meaning. Unless the application of the statute leads to results which are absurd or futile or which are unreasonable and plainly at variance with the policy of the legislation as a whole, the language must be taken to mean what it says. *United States* v. *American Trucking Associations,* 310 U. S. 534, 543.[3] Measured by this test we think the statute applies, as the Circuit Court of Appeals held, to "any of the uses to which passports regularly is-

[3] See also *United States* v. *Jin Fuey Moy,* 241 U. S. 394; *United States* v. *Katz,* 271 U. S. 354; *United States* v. *Giles,* 300 U. S. 41; *United States* v. *Raynor,* 302 U. S. 540.

sued may be customarily put" (R. 402). For in striking at the "use" of passports deceitfully obtained, forged, altered or improperly transferred Congress must have intended, at the very least, to reach those uses in connection with travel which are a part of the ordinary incentives for obtaining passports, or for forging, altering or transferring them.

Second: If the statute applies to customary use, to uses within the ambit of the ordinary incentives for obtaining and possessing passports, there can be no doubt that it applies to a use to establish citizenship and right to enter the country upon returning from abroad. The evidence shows that this is a usual and customary use (R. 121, 126). To the immigrant inspector at the port the certification that the bearer of the passport is a "citizen of the United States" is "the most acceptable evidence of citizenship" (R. 126); he does not regard himself as beyond reach of the request which the passport addresses to "all whom it may concern" to permit the bearer "safely and freely to pass." That this is one of the ordinary functions of a passport has been recognized by the State Department; since December 5, 1929 it has suggested that American citizens leaving the United States for a country where passports are not required nevertheless carry a passport, assigning as one of the reasons that it will "enable the holder to establish his American citizenship upon his return to the United

States and thus facilitate his entry".[4] To hold the statutory prohibition inapplicable to such a use would plainly involve an artificial distortion of the language producing a result at variance with the evident theory of the law.

The Circuit Court of Appeals did not hold and we do not argue that the statute applies to *all* uses to which a passport may be put. There is, accordingly, no point to the hypothetical case put by petitioner (Brief p. 17) of the use of a fraudulently obtained passport to identify the holder as a citizen entitled to a license. Such a use is not a customary one. It is not a part of the ordinary incentive for obtaining a passport or for forging, altering or transferring it. It is not a use in connection with travel or an act within the exclusive jurisdiction of Congress. Its punishment involves the large issue which is not present here of the relationship between the federal penal law and the law of the states. That such a use might extend the statute to a realm beyond the reasonable contemplation of Congress clearly does not compel the conclusion that Congress, in punishing the use of certain passports for purposes of travel, intended

[4] This "notice" was first issued May 11, 1929. It was reissued December 5, 1929, March 20, 1930, September 26, 1930, October 15, 1931, February 20, 1932, January 3, 1933, July 22, 1933, March 7, 1934, September 15, 1934, March 27, 1935, March 1, 1936, July 15, 1936, February 1, 1937, May 1, 1938, January 16, 1939.

to exclude the use of a passport upon a return to this country.[5]

Third: There is no support in the language or evident theory of the statute for the petitioner's contention that it applies only to uses which are "fraudulent" in themselves, by which we understand him to mean uses which work some deception as to a fact which is relevant to the purpose for which the passport is used. (Petitioner's Brief, pp. 6, 9–10). As we have previously said, the prohibitions of "use" are obviously supplementary to the prohibitions of those abuses of the passport which are not themselves uses. They serve to strengthen the latter prohibitions by declaring that no one shall profit from deceitfully obtaining a passport or from forging, altering or transferring it. Their applicability is measured, therefore, not by the fraud implicit in a particular use, but

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[5] Petitioner adverts, in passing (Brief, pp. 12–13, and note 19, p. 13), to the contention in the courts below in *United States* v. *Warszower*, No. 338, that the word "use" if applied to a use to obtain entry to the United States "is so indefinite as to suggest its unconstitutionality." It is enough in reply to quote the language of Mr. Justice Holmes, speaking for this Court in *United States* v. *Wurzbach*, 280 U. S. 396, 399: "Whenever the law draws a line there will be cases very near each other on opposite sides. The precise course of the line may be uncertain, but no one can come near it without knowing that he does so, if he thinks, and if he does so it is familiar to the criminal law to make him take the risk."

It is not denied that Congress could constitutionally punish the use of a fraudulently obtained passport to enter the United States. *Stromberg* v. *California*, 283 U. S. 359, is therefore, not in point.

by whether the use is within the ambit of the ordinary incentives for perpetrating the prior fraud.[6]

Fourth: Petitioner apparently concedes that the use of a passport in this country to obtain a visa for travel abroad, its use at foreign ports to facilitate entry and exit as an American citizen, and its use in foreign countries to assert the rights accorded to American citizens or to claim diplomatic protection are all "uses" within the meaning of the statute. But he insists that the statute draws a line at the foreign port of embarkation and does not apply when the passport is used to enter an American port upon debarking from a vessel from abroad. We see no reason for thus excluding the final use, as an incident of travel, to which passports are commonly put.

To sustain the distinction, petitioner invokes cognate provisions of the statute punishing a use

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[6] Petitioner places great reliance (Brief, pp. 8–9) upon the following statement of Attorney General Gregory, in recommending the legislation: "There should be punishment for the person who fraudulently obtains or fraudulently uses a passport" (Annual Report, 1916, p. 11; Appendix, Petitioner's Brief, p. 12). We read this sentence as referring not to the uses which are punished when there has been a prior abuse, but to the uses punished by Section 3 of the statute, which are inherently fraudulent in themselves. Compare the prior statement of the Attorney General which epitomizes the three prohibitory sections, in characterizing the Act as one "making criminal the fraudulent obtaining, transfer or use of passports, and the alteration or forgery of passports issued." (Report, p. 17, Appendix, Petitioner's Brief, p. 11.)

"in violation of the conditions or restrictions therein contained" forbidden by Section 3 (U. S. C., Title 22, Sec. 221) and a use of a "passport validly issued which has become void by the occurrence of any condition therein prescribed invalidating the same" prohibited by Section 4 (U. S. C., Title 22, Sec. 222). He argues that "use" cannot include use to obtain entry into the United States as a citizen because if it does the statute would make criminal the practice, which has been countenanced by the immigration authorities, of presenting an expired passport to establish citizenship upon returning to the United States from Canada, Bermuda or Mexico. The Circuit Court of Appeals properly answered: "we see no need of passing on the legality of such a practice" (R. 403). It is, however, worthy of note that petitioner's argument is based on the assumption, sustained by no authority, that expired passports legitimately obtained and held fall within the scope of the provisions quoted above. Whether these provisions apply to a passport invalidated by the ordinary time limitation is at least debatable. They may apply only to passports used in violation of special limitations imposed by the State Department in times of emergency, such, for example, as the limitation of a passport to one trip or to specified geographical areas or the qualifications now endorsed on all passports excluding validity "for travel to or in any foreign state in connection with entrance into or service in foreign military or naval forces." Thus, there is no rea-

son to suppose that the immigration authorities tolerate the practice because they hold that the presentation of passports to obtain entry into the United States is not a "use" within the meaning of the law. It is at least equally possible that their acquiescence may be attributed to the view that the passport is not used "in violation of the restrictions therein contained," nor void because of "any condition therein prescribed invalidating the same." Moreover, in playing upon the meaning of "use" to vindicate the legality of presenting expired passports as evidence of citizenship, petitioner contends, in effect, that the presentation of an expired passport as a method of identification in entering Canada or Mexico would be a violation of the law, though its presentation upon returning to this country would not be. This new incongruity is avoided if the issue is faced not in terms of the meaning of "use" but in terms of the meaning of the clauses describing the passports which may not be used. When the issue is stated in this way, the obvious distinction between the use of a passport which bears its deficiency on its face and the use of a passport obtained, transferred, or altered by fraud may be accorded proper weight.

Fifth: Far from avoiding absurd consequences, apparent upon the face of the statute, a measure of liability which excludes a use of the passport to obtain entry to the United States creates them. If a use at an American port of entry is not a "use" within the meaning of the statute, the prohibition is

inapplicable not alone to the use of fraudulently obtained passports to establish the right to enter but also to the use of passports which have been forged, counterfeited, or altered or which were issued for the use of someone else. It is inapplicable to a citizen charged with crime who enters with a false passport to avoid apprehension and prosecution. It is also inapplicable to an alien employing an American passport acquired by fraud to effect an illegal entry to the United States. Such indeed is precisely the situation in *Warszower* v. *United States*, No. 338, in which the same argument is advanced. It surpasses belief that Congress, legislating after two months of war, intended to reach an American citizen who exhibited a fraudulently obtained passport abroad but did not intend to reach a foreign agent who first exhibited a fraudulent passport upon arriving at an American port, unless the Government could prove that he was a party to the initial fraud. It is difficult to believe that Congress, legislating to protect the integrity of the American passport, chose to strike at uses abroad which it might be impossible to prove and not at uses upon arriving from abroad which would be susceptible of easy proof. Yet these are the apparent implications of a reading of the statute which distinguishes between a use of a passport at the beginning or during the progress of a journey abroad and a use at the end.

Sixth: Petitioner intimates (Brief, p. 15) and in *Wurszower* v. *United States,* No. 338, the petitioner strongly argues that the use of a passport at an American port to establish American citizenship is not a prohibited use because it is not a use *qua* passport. In support of the contention reliance is placed upon a dictum of this Court uttered long ago in an irrelevant context that a passport "is a document, which, from its nature and object, is addressed to foreign powers" (*Urtetiqui* v. *D'Arcy,* 9 Pet. 692, 699) and upon statements of Gaillard Hunt in 1898 and Professor Borchard in 1915 that a passport is designed for use abroad (*The American Passport,* p. 4; *Diplomatic Protection of Citizens Abroad,* p. 493). The argument treats the statute as if it were a treatise on international law. But more than this, it exhibits the danger of finding the essence of a thing in its historic origin alone. Passports were not commonly required anywhere until shortly before the World War (Borchard, op. cit. sec. 218) and not until the Immigration Act of February 5, 1917, c. 29, 39 Stat. 874, did Congress impose a general restriction upon entry to the United States. Even if prior to these significant events it would have been analytically correct to exclude from the functions of a passport its use to establish citizenship upon returning from a trip abroad, it seems clear that by these events the ends to be served by the possession of a passport were

drastically changed. On the one hand, the obtaining of passports in connection with travel became a routine affair and on the other hand it became a matter of vital importance for American Immigration inspectors to distinguish between aliens and citizens arriving from abroad. The best evidence of American citizenship that anyone could submit was then as now an American passport. Thus the concept of a passport both at the time when the statute was passed and at the time of the petitioner's acts had become empty if it did not include the function of establishing citizenship upon returning from abroad. There is obviously no reason why the statute should be read to perpetuate a doctrinaire concept, already outmoded when the statute was passed. Petitioner's use of the passport was a use to pass a port. It was a use *qua* passport within the meaning of any definition that takes account of the facts of life.

Seventh: Petitioner invokes a statement in the Presidential Passport Rules in force when the statute was enacted to the effect that passports "are intended for identification and protection in foreign countries, and not to facilitate entry into the United States, immigration being under the supervision of the Department of Labor." (Rules of January 24, 1917, rule 6, par. 2.) The quoted language must be viewed in the context in which it first appears in paragraph 3 of Rule 4 of the Rules of June 7, 1911. This rule called attention to the requirement of the Department of Commerce

and Labor that persons of Chinese race residing in the United States and claiming American citizenship obtain a return certificate before leaving for abroad pursuant to Rule 16 of the Chinese Regulations. In explanation of the inefficacy of the passport as a substitute for the return certificates, the rule added the statement that passports issued by the State Department are intended for identification and protection in foreign countries while immigration [the enforcement of the Chinese Exclusion Act] is under the supervision of the Department of Commerce and Labor. This is the context in which the statement appears in Rule 5 of the Presidential Passport Rules of January 12, 1915 and Rule 7 of the Rules of December 17, 1915. In Rule 6 of the Rules of April 17, 1916, the portion of the statement referring to Chinese claimants of citizenship inexplicably disappeared; the statement about the purpose of passports remained alone and so it stood in Rule 6 of the Rules of January 24, 1917. The next revision came in the Rules promulgated by the President on June 13, 1920, and Departmental Order No. 171, promulgated by the Secretary of State on June 12, 1920. In this revision and in all subsequent Passport Regulations and Executive Orders [7] the statement is omitted. Between Jan-

[7] See Executive Order No. 366 of February 12, 1926, Executive Order No. 4806 of January 31, 1928; Departmental Order No. 433–A of January 31, 1928; Executive Order No. 5860 of June 22, 1932; Departmental Order No. 538 of June 22, 1932; Executive Order No. 7856 of March 31, 1938; Departmental Order No. 749 of March 31, 1938.

uary 24, 1917 and June 13, 1920, the Immigration Act of 1917 had been enacted as well as the Espionage Act of June 15, 1917, and the Act of May 22, 1918 (U. S. C., Title 22, Secs. 223–226), which, for a limited time, *required* American citizens to produce passports upon returning from abroad. The Passport Rules of January 24, 1917, were, to be sure, continued in effect by Section 13 of Executive Order No. 2932 of August 8, 1918, but the same executive order put into effect the requirement of the Act of May 22, 1918 that all persons entering the United States from abroad possess passports.

It is difficult to find in these circumstances anything which strengthens petitioner's case. Even if the general statement in the Rules of 1916 and 1917 is to be read without regard to its original reference to the case of Chinese citizens it does not establish that the use of passports upon re-entry was uncommon then and certainly does not establish that such use was uncommon when the statute was passed—after the Immigration Act of 1917. Moreover, even if the use of passports by citizens to establish the right to enter was uncommon when the statute was passed,[8] as the Circuit Court of Appeals assumed *arguendo* (R. 402), it would not follow that the statute would be inapplicable to such a use after it had become customary. For, as the court below aptly said: "the meaning of a

[8] That it was not is indicated by the material from the State Department files referred to, *infra*, p. 29, n. 9, and set forth in Appendix B, *infra*, pp. 46–56.

statute does not change save as it may be amended; but a statute is prospective and its application to a given state of facts may change as new things or new uses of old things come into existence" (R. 402). Cf. *De Lima* v. *Bidwell*, 182 U. S. 1, 197; *Puerto Rico* v. *Shell Co.*, 302 U. S. 253; *Van Camp & Sons* v. *American Can Co.*, 278 U. S. 245, 253; *United States* v. *Mosely*, 238 U. S. 383, 388. Petitioner speaks as if the statement in the Rules, which antedates Section 220, were an administrative construction of the word "use" made in the course of the application of the statute. This it clearly was not. But if it were, it would be of no avail. Not even the re-enactment of a statute after uniform administrative practice freezes the administrative construction into the statute beyond reach of administrative power to change the interpretation at least prospectively. Cf. *Helvering* v. *Wilshire Oil Co.*, 308 U. S. 90, 100; *Morrissey* v. *Commissioner*, 296 U. S. 344, 354. Hence the presence since 1929 in the State Department's "Notice to Bearers of Passports" of the statement that a passport will "enable the holder to establish his American citizenship upon his return to the United States and thus facilitate his entry" (see p. 16, *supra*) would, in itself, be fatal to the petitioner's claim.

Eighth: Petitioner contends that the pre-history of the Espionage Act shows that Congress was concerned with the use of fraudulently obtained or false American passports to penetrate belligerent lines rather than with the use of such passports to enter the United States and argues from this

that the statute applies only to uses in leaving the United States or in travel or, perhaps, only to "unneutral" uses. (Petitioner's Brief, p. 11.) The conclusion would not follow even if the premise were sound. It is not enough to establish the inapplicability of general language to a particular situation to show that the language was not specifically directed at that situation. It must be shown that had the particular situation been envisaged "Congress would so have varied its comprehensive language as to exclude it from the operation of the act." *Puerto Rico* v. *Shell Co.*, 302 U. S. 253, 257; cf. *Van Camp & Sons* v. *American Can Co.*, 278 U. S. 245, 253; *United States* v. *Mosely*, 238 U. S. 383, 388. The point was strikingly made by Mr. Justice Holmes in the *Mosely* case by observing in support of a broad interpretation of general language of the Civil Rights Act that the Fourteenth Amendment "was adopted with a view to the protection of the colored race but has been found to be equally important in its application to the rights of all".

That Congress was not or, at least, would not have been indifferent to the use of fraudulent and false passports by American citizens to establish the right to enter the United States is amply indicated by the Act of May 22, 1918, c. 81, 40 Stat. 559 (U. S. C., Title 22, secs. 223–226). This statute, applicable by its terms while the United States was at war, made it unlawful after the Presidential proclamation of August 8, 1918, for a citizen to depart from or enter the United States without a

valid passport and imposed comparable limitations on the ingress and egress of aliens. The Chairman of the Senate Committee on the Judiciary explicitly stated, in explaining the Committee report, that the bill "may be regarded as a supplement to the Espionage Act" (56 Cong. Rec., Pt. 6, pp. 6191, 6912). The legislative history of the Act makes clear that the *requirement* of a passport was imposed upon entering citizens because of grave concern, voiced by the State Department and the Department of Justice, that renegade American citizens were returning to the United States in the interests of the Central Powers. (See H. Rep. No. 485, 65th Cong., 2d Sess., pp. 2–3; 56 Cong. Rec., Pt. 6, pp. 6028, 6039, 6064–6067, 6191–6192). An amendment to eliminate the provision with respect to the entry of citizens was proposed in the House and defeated on this ground (56 Cong. Rec., Pt. 6, pp. 6063–6067). While the purpose of requiring passports was apparently to establish administrative control over exit and entry and thus to avoid in the case of a citizen seeking entry "the difficulty of securing legal evidence from the place of his activities in Europe" (H. Rep. No. 485, 65th Cong., 2d Sess., p. 3), it is inconceivable that Congress would have regarded a citizen who obtained a passport by fraud as immune from prosecution for a "use" in effecting an entry.[8] The requirement of a passport in

[8] In view of the petitioner's extensive reliance upon newspaper reports in the effort to show that the use of passports

the case of citizens was permitted to expire after the war, though the provisions with respect to aliens were continued. (Act of March 2, 1921, c. 113, 41 Stat. 1217, U. S. C., Title 22, sec. 227). But the fact that the requirement was imposed by a statute regarded as supplementary to that under which petitioner was convicted refutes the contention that the use of passports upon entering the United States must be regarded as beyond the contemplation of the Congress.

Ninth: There is another reason why it is unrea-

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to obtain entry to the United States was not a matter of concern before the enactment of the Espionage Act, it is of importance to note that the State Department files indicate that the matter was of grave concern at least as early as February 1917. On February 13, Ambassador Gerard cabled: "I recommend that all persons bearing American emergency passports issued Berlin Embassy subsequent to break of diplomatic relations be most carefully investigated before being allowed to land in the United States" (Appendix B, *infra*, p. 46). On February 17, the State Department cabled the American Legation in Copenhagen urging caution in examining the passports of Americans arriving from Germany (Appendix B, *infra*, p. 46) and on April 18 cables were sent to the Legations at Copenhagen, Berne, and The Hague which contained the statement: "It is reported from a reliable source that German authorities will probably attempt to send to the United States secret agents in the guise of American citizens who were unable to leave Germany when diplomatic relations were severed. The same course may be followed by Austria" (Appendix B, *infra*, p. 47). At the same time, efforts were made to enlist the cooperation of the Treasury and the Departments of Justice and Labor to provide for a careful examination of all passengers upon arrival at American ports. The most significant items in this interdepartmental correspondence are set forth in Appendix B, *infra*, pp. 49–56.

sonable to suppose that in enacting the present statute Congress intended to exclude the use of a passport to obtain entry to the United States as an American citizen. Assuming *arguendo* that, as petitioner contends, Congress was primarily concerned with the use of false or fraudulently obtained American passports abroad, it must have recognized the almost certain presumption that a person arriving from abroad who uses a passport to identify himself as an American citizen has also used the passport abroad.[10] It must also have recognized the virtual impossibility of obtaining proof of use abroad, particularly in time of war when effective enforcement of the statute would be most important. In other situations where an act or condition difficult of proof is indicated by another act or condition which is readily proved, legislatures have attached the sanction to the latter as a means of reaching the former.[11] There is no basis for believing that Congress rejected this theory of legislation in defining the crime of "use" to supplement the crimes of fraudulent obtaining,

[10] Compare the stamps on Browder's passport (R. 319–320).

[11] See Holmes, *The Common Law*, pp. 58–59, and the dissenting opinion of Mr. Justice Holmes in *Keller* v. *United States*, 213 U. S. 138, 149–150; *Commonwealth* v. *Smith*, 166 Mass. 370; *Tenement House Department* v. *McDevitt*, 215 N. Y. 160; *People* v. *Billardello*, 319 Ill. 124; *United States* v. *Balint*, 258 U. S. 250. The principle is impliedly recognized by the decisions of this Court holding that a state may constitutionally include within the reach of a statute situa-

forging, altering, and transferring.[12] Viewed in this way the statute embodies its own principle of limitation: it is inapplicable to those uses of passports, unrelated to travel abroad, which are not clearly indicative of uses in foreign countries.

Tenth: There remains the argument that petitioner's use of his passport was not a prohibited use because he could have established in other ways the conceded fact that he is a citizen. By the same token a citizen who presented a fraudulently obtained passport to invoke diplomatic protection abroad would not violate the statute because he could have established his citizenship in other ways and entitled himself to protection (*cf.* Rev. Stat. § 2001, U. S. C., Title 8, Sec. 14; Borchard, *Diplomatic Protection of Citizens Abroad,* pp. 493–495). But the petitioner apparently concedes that such a use is forbidden. It seems clear that the statute strikes not at the end for which the passport is employed but at the use of the false or fraudulent passport as a means. Nothing in the language,

tions which do not present the evil at which the statute was aimed, if reasonably necessary to reach the situations which do present the evil. See *e. g.*, *Purity Extract Company* v. *Lynch*, 226 U. S. 192, 201, 204; *Hebe Co.* v. *Shaw*, 248 U. S. 297; *Euclid* v. *Amber Realty Co.*, 272 U. S. 365, 388–389; *Semler* v. *Oregon State Board of Dental Examiners*, 294 U. S. 608, 612.

[12] Compare the statement of the trial court (R. 28): "there would be a very practical difficulty about prosecution, if they had to go and find the evidence in the bowels of Russia."

theory, or history of the legislation suggests that it must be an essential rather than a customary means.

Congress has been content to rely for the most part on deportation as the sanction against aliens who enter illegally (*Flora* v. *Rustad,* 8 F. (2d) 335, 337 (C. C. A. 8th)) but it has not hesitated to make illegal entry criminal when it is effected by papers which are false or fraudulently obtained (U. S. C., Title 8, Sections 180a, 220, Title 22, Sections 223, 227). The principle applicable here is the same.

II

THE EVIDENCE WAS SUFFICIENT TO ESTABLISH A "WILLFUL" USE WITHIN THE MEANING OF THE STATUTE

Petitioner contends that even if there was a "use" of the fraudulently obtained passport there was not a "willful" use within the meaning of the law. He argues that "willful" means with evil purpose and that Browder's use could not have been willful in that sense because he was a citizen entitled in any event to enter the country. His contention on this score consists in part of the points we have already answered.[13] We address ourselves here only to the argument which rests on the alleged meaning of the word "willfully" when used in a criminal statute.

[13] In the petition for certiorari as in the brief in the Circuit Court of Appeals, the issues of "use" and "willfullness" are carefully separated. It is only in the Brief on the Merits in this Court that they are merged by the petitioner.

First: It is questionable that the contention, whatever its merit, may be urged by the petitioner at this stage. The trial court charged that " 'willfully and knowingly,' as employed in the statute, mean deliberately and with knowledge and not something which is merely careless or negligent or inadvertent" (R. 292–293). Petitioner did not except to the charge. He did not ask that the instruction be made more explicit or request an instruction defining "willfully" to mean with ulterior, evil purpose.[14] He appears to have been content in the trial court, in arguing that the statute is inapplicable to a use by a citizen to obtain re-entry, to focus on the proposition that it is not a "use" within the meaning of the law.[15] The Circuit Court of Appeals accordingly held (R. 403) that the correctness of the judge's charge was not open to question on appeal. The ruling was within the discretion of the court and, in view of the extensiveness of the petitioner's requests and exceptions on other points and his apparent acquiescence on this

[14] In his petition for certiorari, though not in his brief on the merits, petitioner pointed to the 26th, 33d, 35th, and 36th requests to charge (R. 284, 286–287, Petition, p. 25, n.). None of them made the point. One was concerned with his state of mind at the time he made the application for his passport; another embodied his contention that the statute applies only to uses abroad or uses for which a passport is essential. The remaining two concerned the power of an immigration inspector to deny entry to citizens of the United States.

[15] See note 13, *supra*.

one, the discretion of the appellate court was not abused. Cf *Manton* v. *United States,* 107 F. (2d) 834 (C. C. A. 2d), certiorari denied, 309 U. S. 664; *Greater New York Live Poultry Chamber of Commerce* v. *United States,* 47 F. (2d) 156 (C. C. A. 2d). Petitioner argues that the question may nevertheless be raised because the motion for a dismissal of the indictment and for a directed verdict put in issue the sufficiency of the evidence to establish the crime charged. The Circuit Court of Appeals held, without articulating a definition of "willfully," that on this issue as on the others the case was properly submitted to the jury. Since two courts have thus sustained the sufficiency of the evidence, we doubt that this Court will examine its sufficiency again. Cf. *Delaney* v. *United States,* 263 U. S. 586, 589–590. In *United States* v. *Murdock,* 290 U. S. 389, upon which petitioner relies to sustain the availability of the contention, the conviction was reversed, not sustained, by the Circuit Court of Appeals and the precise issue was presented by a request to charge (290 U. S. at 393). Moreover, the decision of this Court in the *Murdock* case was that the issue of willfulness should have been submitted to the jury. In the present case it was.

Second: Assuming, however, that the issue is presented we think that the contention is without merit. The argument that the statute is inapplicable to a citizen of the United States who uses a fraudulently obtained passport to establish his

right to reenter upon returning from abroad is as unfounded when addressed to the statutory word "willfully" as when addressed to the statutory word "use." Browder's use was nonetheless "willful" because he could presumably have established his citizenship eventually in other ways.

If, as we contend, the statutory word "use" includes the use of a passport by a citizen to establish his right to enter the country upon returning from abroad, the evidence clearly proved that petitioner intentionally did what the statute forbids, with knowledge of all the facts upon which the criminality of the act depends. He knew that he had falsely concealed the existence of his earlier passports in order to obtain this one. He used it intentionally to obtain one of the major advantages enjoyed by the bearer of a passport, reentry without delay or inconvenience. There is no doubt that this is sufficient for the ordinary purposes of criminal liability (*cf. Horning* v. *District of Columbia*, 254 U. S. 135, 137) and that even less would often be enough (*cf. The Queen* v. *Prince*, L. R. 2 C. C. R. 154; *Commonwealth* v. *Smith*, 166 Mass. 370). But petitioner contends that when a criminal statute requires that the prohibited act be done "willfully," it must be taken to require that the act be done for the purpose of achieving some evil, ulterior to that inherent in the prohibited act itself. There is nothing in the decisions of this Court which sustains the view that the word "willfully" ever produces so wide a departure from the

general principles of criminal liability; or that its use in criminal statutes has any stereotype meaning at all.[16]

The decisions upon which the petitioner relies hold no more than that the presence of the word "willfully" in a statutory definition of crime suggests a legislative purpose to allow the general defenses of mistakes of fact,[17] accident, or unavoidable necessity,[18] or the exceptional defense of mistake of law.[19] Even on these issues, it is clear that

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[16] An examination of the statutes themselves makes clear that Congress has followed no consistent pattern in using such words as "knowingly," "willfully," and "maliciously" in defining crimes. See *e. g.*, "knowingly": U. S. C., Title 18, Sections 75, 103, 117; "willfully": U. S. C., Title 18, Sections 111, 120, 124, 231; "knowingly and falsely": U. S. C., Title 8, Section 281; "knowingly and unlawfully": U. S. C., Title 18, Section 110; "knowingly and willfully": U. S. C., Title 18, Sections 89, 98; "knowingly, willfully or wantonly": U. S. C., Title 18, Section 96; "willfully or maliciously": U. S. C., Title 18, Section 116; "unlawfully and willfully": U. S. C., Title 18, Section 328; "knowingly or willfully": U. S. C., Title 18, Section 81; "willfully or knowingly": U. S. C., Title 22, Section 222.

On the other hand, when Congress has intended to make some specific intent an element of a crime, it has not hesitated to say so, as the other sections of the Espionage Act make clear. See U. S. C., Title 50, Supp. V, Sections 31–38.

[17] *Spurr* v. *United States*, 174 U. S. 728.

[18] *Felton* v. *United States*, 96 U. S. 699.

[19] *United States* v. *Murdock*, 290 U. S. 398; *California* v. *Latimer*, 305 U. S. 255, 261; *Federal Power Commission* v. *Metropolitan Edison Co.*, 304 U. S. 375, 387; *Potter* v. *United States*, 155 U. S. 438. See also *People* v. *Weiss*, 276 N. Y. 384; *People* v. *Clark*, 242 N. Y. 313. But *cf. Townsend* v. *United States*, 95 F. (2d) 352, 358 (App. D. C.), certiorari denied, 303 U. S. 664.

what is determinative is not the formula in which the prohibition is couched, but the necessity of the defense to protect action in good faith and its compatibility with the theory and purpose of the statute.[20]

But even if the decisions held that the word "willfully" imports an inexorable command that the defense of mistake of law be allowed, they would not aid the petitioner. To hold that a statutory prohibition which is otherwise applicable is inapplicable when the act is done with an affirmative belief in its legality is quite a different thing from holding that the statutory prohibition requires that the acts which are prohibited be done with an ulterior evil purpose. There is no evidence that when petitioner presented his fraudulently obtained passport upon arriving at the Port of New York he did so in the belief that in spite of his antecedent fraud he was legally entitled to employ the passport for this purpose. There is nothing to indicate that he was

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[20] Thus in *United States* v. *Illinois Central Railroad Co.*, 303 U. S. 239, not even inadvertence was held to be a defense to a suit for a penalty, although the statute used the words "Knowingly and willfully." See also *St. Louis & S. F. R. Co.* v. *United States*, 169 Fed. 69 (C. C. A. 8th). Compare *Queen* v. *Tolson*, 23 Q. B. D. 168, where mistake of fact was held a defense to bigamy although the statutory prohibition was in terms absolute. See also *The King* v. *Wheat* (1921), 2 K. B. 119; *Cotterill* v. *Penn* (1936), 1 K. B. 53; *Thomas* v. *The King*, 59 C. L. R. 279, especially the opinion of Dixon, J., and the dissenting opinion of Evatt, J.; Kenny, *Outlines of Criminal Law* (15th ed.), p. 50.

attentive to the question of legality until after the prosecution had been instituted in this case. If the petitioner had sought to testify that he acted with an affirmative belief in the legality of his act, there would have been occasion to determine the availability of the defense; and if his testimony had been allowed, the jury would have had the opportunity to estimate the sincerity of his claim in the light of his previous actions in obtaining and using passports. But the evidence introduced by the Government did not require a finding that the defendant acted with the belief that in spite of his antecedent fraud, the act was lawful; it precluded such a finding.

The wide difference between the contention in this case and that sustained in the decisions invoked by the petitioner is well indicated by *United States* v. *Murdock*, 290 U. S. 389, upon which he mainly relies. In the *Murdock* case, this Court held that it was relevant to a defense to a prosecution for the crime of willfully failing to supply information required by law or regulations that the taxpayer refused to supply the information in erroneous reliance upon his constitutional privilege against self-incrimination. It was not until the ruling of this Court on the sufficiency of Murdock's special plea in bar that it was settled that the Fifth Amendment afforded him no protection because the crimes which his information would disclose

were crimes against state law.[21] The trial court withdrew from the jury Murdock's claim that his refusal to answer was made in good faith in reliance upon an actual belief that he was within his constitutional rights. This Court held the ruling to be error and affirmed a judgment of the Circuit Court of Appeals setting aside the conviction. The decision stands for the proposition that a mistake of law, and in particular a mistake of overriding constitutional law, must be submitted to the jury in a prosecution under the section of the Revenue Act involved. It thus reconciled the values inherent in the enforcement of the Revenue Act and the values involved in preserving ample opportunity for the assertion of constitutional rights. It has no application here, where petitioner made no showing that he acted in similar reliance on his supposed legal rights and rests his claim simply on the ground that he could have accomplished lawfully what he chose to accomplish unlawfully.

It is true that in the *Murdock* case this Court referred to "an act done with a bad purpose" as one of six meanings which the word "willfully" may have. But the decisions cited in support of the statement are those to which we have previously referred invoking the defense of mistake of fact

[21] *United States* v. *Murdock*, 284 U. S. 141. Indeed, the question had been specifically reserved by the Court in *Vatjauer* v. *Comm'r of Immigration*, 273 U. S. 103, 113.

or mistake of law. We think the context makes clear that "bad purpose" did not mean, as petitioner argues, an ulterior evil end. Moreover, the opinion recognized that the word "often denotes an act which is intentional, or knowing, or voluntary, as distinguished from accidental" (290 U. S. at 394) and added to "done with a bad purpose" four additional meanings: (1) "without justifiable excuse"; (2) "stubbornly, obstinately, perversely"; (3) "a thing done without ground for believing it is lawful"; (4) "conduct marked by careless disregard whether or not one has the right so to act" (290 U. S. at 394–395). The meanings which would have denied the relevancy of the defense were excluded only after an examination of the statute as a whole led to the conclusion that Congress did not intend to provide that taxpayers who failed to disclose information in reliance upon their supposed constitutional rights should act at their peril. It was found to be persuasive that, otherwise, by the terms of the statute a person who "by reason of a bona fide misunderstanding as to his liability for the tax, as to his duty to make a return, or as to the adequacy of the records be maintained" would become criminal "by his mere failure to measure up to the prescribed standard of conduct" (290 U. S. at 396). Thus the decision in the *Murdock* case did not declare a general rule as to the meaning of "willfully" and certainly not the rule for which the petitioner contends.

It seems too clear for argument that the freedom of American citizens to use fraudulently obtained passports to achieve entry to the United States does not present a claim for legal protection comparable to that presented when action, which does not involve antecedent fraud, is taken in affirmative reliance upon a supposed legal right.

Third: In connection with his discussion of the sufficiency of the evidence of willfullness, petitioner complains of the summation of the United States Attorney. Insofar as the summation is criticized because it emphasized the fact that petitioner admittedly had obtained previous passports by perjury, the complaint has been answered by what has already been said. The fact was relevant not only to establish that the passport has been secured by fraud but also to dissipate the possibility that at the time of the uses charged in the indictment petitioner acted with an affirmative belief in the legality of his acts. The summation was not attacked upon the appeal to the Circuit Court of Appeals or in the petition for certiorari in this Court. No error has been assigned with respect to it and it seems clear that none could properly be assigned.

CONCLUSION

For the reasons stated it is respectfully submitted that the judgment of the Circuit Court of Appeals should be affirmed.

FRANCIS BIDDLE,
Solicitor General.

WENDELL BERGE,
Assistant Attorney General.

JOHN T. CAHILL,
United States Attorney,
Southern District of New York.

HERBERT WECHSLER,
RAOUL BERGER,
Special Assistants to the Attorney General.

JANUARY 1941.

ROBERT L. WERNER,
Assistant U.S. Attorney,
Southern District of New York.

APPENDIX A

Title IX of the Espionage Act of 1917, c. 30, 40 Stat. 227 (U. S. C., Title 22, Sections 213, 220, 221, 222), provides:

SECTION 1. Before a passport is issued to any person by or under authority of the United States such person shall subscribe to and submit a written application duly verified by his oath before a person authorized and empowered to administer oaths, which said application shall contain a true recital of each and every matter of fact which may be required by law or by any rules authorized by law to be stated as a prerequisite to the issuance of any such passport. Clerks of United States courts, agents of the Department of State, or other Federal officials authorized, or who may be authorized, to take passport applications and administer oaths thereon, shall collect, for all services in connection therewith, a fee of $1, and no more, in lieu of all fees prescribed by any statute of the United States, whether the application is executed singly, in duplicate, or in triplicate.

SEC. 2. Whoever shall wilfully and knowingly make any false statement in an application for passport with intent to induce, or secure the issuance of a passport under the authority of the United States, either for his own use or the use of another, contrary to the laws regulating the issuance of passports or the rules prescribed pursuant to such laws, or whoever shall wilfully and knowingly use or attempt to use, or furnish to another for use, any passport the issue of

which was secured in any way by reason of any false statement, shall be fined not more than $2,000 or imprisoned not more than 5 years [1] or both.

SEC. 3. Whoever shall willfully and knowingly use, or attempt to use, any passport issued or designed for the use of another than himself, or whoever shall willfully and knowingly use or attempt to use any passport in violation of the conditions or restrictions therein contained, or of the rules prescribed pursuant to the laws regulating the issuance of passports, which said rules shall be printed on the passport; or whoever shall willfully and knowingly furnish, dispose of, or deliver a passport to any person, for use by another than the person for whose use it was originally issued and designed, shall be fined not more than $2,000 or imprisoned not more than five years, or both.

SEC. 4. Whoever shall falsely make, forge, counterfeit, mutilate, or alter, or cause or procure to be falsely made, forged, counterfeited, mutilated, or altered any passport or instrument purporting to be a passport, with intent to use the same, or with intent that the same may be used by another; or whoever shall willfully or knowingly use, or attempt to use, or furnish to another for use any such false, forged, counterfeited, mutilated, or altered passport or instrument purporting to be a passport, or any passport validly issued which has become void by the occurrence of any condition therein prescribed invalidating he same, shall be fined not more than $2,000 or imprisoned not more than five years, or both.

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[1] By the Act of March 28, 1940, c. 72, 54 Stat. 80, the maximum term of imprisonment under this and the succeeding sections was increased to ten years.

APPENDIX B

[Telegram Received]

RC GREEN

FROM Berne

Dated February 13, 1917.

Rec'd 5 P. M.

SECRETARY OF STATE,

Washington.

520, February 13, ten a. m.

From Ambassador Gerard:

"I recommend that all persons bearing American emergency passports issued Berlin Embassy subsequent to break of diplomatic relations be most carefully investigated before being allowed to land in the United States."

STOVALL.

[Telegram sent]

DEPARTMENT OF STATE,

Washington, Feb. 17, 1917.

(Mutatis mutandis to the Legations at Berne and The Hague.)

AMLEGATION,

Copenhagen.

Telegraph Department, if possible, names of all Americans who have arrived in Denmark from Germany since severance diplomatic relations. Also telegraph each day names of all Americans arriving from Germany. Publish notice in press

instructing all Americans who have arrived and who arrive hereafter from Germany to bring their passports to Legation to be visaed. Inform local authorities. Examine passports, comparing them with genuine passports, and question bearers carefully. Telegraph Department concerning any cases in which passports appear to have been improperly issued. Strike out Germany from all passports. If any persons bear emergency passports issued or purporting to have been issued by American Embassy, Berlin, telegraph Department numbers and dates of passports as well as names of holders.

CB/RWF/ELF.
Enciphered by MOR.
Sent by operator 7 P. M., 2/7/17, 191 WU.

[Telegram sent]

DEPARTMENT OF STATE,
Washington, April 18, 1917.

AMLEGATION,
The Hague.[1]

See Department's 419, February seventeen, concerning passports of persons arriving from Germany. Follow same procedure with regard to passports of persons arriving from Austria. Endeavor to see that you are informed as to arrival of all such persons.

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[1] Similar cables were sent on the same date to the Legations at Berne and Copenhagen.

Confidential. It is reported from a reliable source that German authorities will probably attempt to send to the United States Secret Agents in the guise of American citizens who were unable to leave Germany when diplomatic relations were severed. The same course may be followed by Austria. In doubtful cases require references in the United States and telegraph Department before visaing passports.

(Sgd.) LANSING.

CB–RWF–NLF.
Enciphered by ———
Sent by operator —— M., 18/11, 191——.

[Telegram Sent]

DEPARTMENT OF STATE,
Washington, April 11, 1917.

AMLEGATION,
Christiana.

Your 154, April 4.

All persons sailing for this country should be advised to have their passports visaed by a diplomatic or consular officer of the United States. If officer to whom application for visa is made has reason to believe applicant is about to come to this country for an improper or inimical purpose, he should decline visa and report case to Department. If doubtful as to true purposes of applicant, but has no definite grounds for his suspicions, he may visa passport, but should telegraph Department concerning his suspicions, so that person concerned

may be watched. Publish notice in press advising persons to have passports visaed and notify steamship companies. Officers visaing passports should examine each applicant with the greatest care in order to determine whether he is entitled to the passport which he bears and is coming to this country for the purpose alleged by him. No passports held by German subjects should be visaed without the express authorization of the Department.

CB/R ~F/ELF.

Enciph. by MJR. (Sgd) LANSING.

Sent by operator 8 P. M. 4/11/17, 191 PO.

FEBRUARY 15, 1917.

The Honorable The SECRETARY OF THE TREASURY.

SIR: This Department has received a dispatch of February 13 from Ambassador Gerard, transmitted through the Legation at Berne, in which he recommends that all persons bearing American emergency passports issued by the Embassy at Berlin subsequent to the severance of diplomatic relations between this country and Germany be most carefully investigated before they are allowed to land in this country.

You are requested to instruct the customs officials who examine passports of American citizens returning to this country that they carry out the suggestion of the Ambassador. The Department is telegraphing to Mr. Gerard to state more definitely, if possible, the reasons for his suggestion, and particularly to give the names of any bearers of passports of the kind mentioned who may be suspected of having obtained their passports

fraudulently or of coming to this country for improper purposes.

I have the honor to be, Sir,

Your obedient servant,

ROBERT LANSING.

138./409.
CB/RWF/ELF.

102574

TREASURY DEPARTMENT,
Washington, February 19, 1917.

The Honorable The SECRETARY OF STATE.

SIR: I have the honor to acknowledge the receipt of your letter of the 15th instant relative to a despatch from Ambassador Gerard in which he recommends that all persons bearing American emergency passports issued by the Embassy at Berlin subsequent to the severance of diplomatic relations between this country and Germany be most carefully investigated before they are allowed to land in this country.

You request that the customs officers who examine passports of American citizens returning to this country be instructed to carry out this suggestion of the Ambassador.

You add that your Department is telegraphing to Mr. Gerard to state more definitely, if possible, the reasons for his suggestion, and particularly to give the names of any bearers of passports of the kind mentioned who may be suspected of having obtained their passports fraudulently or of coming to this country for improper purposes.

This Department finds it difficult to instruct customs officers intelligently in the matter in the

absence of the necessary specific information, but has today addressed a circular letter to the collectors of customs at the ports on the Atlantic and Gulf Coasts directing them to scrutinize closely all passports issued by Ambassador Gerard which appear to be of an emergency character, and to make a note of the particulars thereof; also in case of any evidence of irregularity to examine the persons presenting the passport and report by wire to the Department all the circumstances.

This Department does not know, however, as you were advised in your letter dated January 11, 1916, of any provision of law authorizing customs officers, as such, to make arrests or detention of persons without warrants duly issued by competent authority, except in cases involving a violation of the customs revenue.

By direction of the Secretary.

Respectfully,

(Sgd.) S. J. PETUR,
Assistant Secretary.

No Enclosure.

APRIL 25, 1917.

The Honorable The ATTORNEY GENERAL.

SIR: The Department has received telegrams of April 17 and April 20 from the American Legation at Christiania and a telegram of April 18 from the American Minister at Stockholm concerning the steamship BERGENSFJORD of the Norwegian-American Line, which sailed from Bergen April 16 with a large number of passengers for the United States. It appears that a number of the passengers have not had their passports visaed by diplomatic or consular officers of the United States, and the Minister

at Christiania suspects there may be persons on board the vessel who are agents of the German Government. For this reason it appears that the Minister, through Captain James Totten, Military Attaché to the Legations at Christiania, Stockholm and Copenhagen, requested Colonel White of the Rockefeller Foundation to examine passports of all passengers for the United States en route and to report suspicious cases to this Government upon his arrival in the United States. At the suggestion of the Minister, the Department is telegraphing to the American Consul-General at Halifax, Nova Scotia, to obtain permission for Colonel White to proceed directly by rail from Halifax to Washington, in order that he may submit his report to the Government before the BERGENSFJORD reaches the port of New York.

It is obviously of considerable importance to have a thorough examination made of all persons coming to this country on the BERGENSFJORD, and also those coming in the future upon vessels sailing from Scandinavian ports. In this connection it may be observed that the Minister at Stockholm reported in his telegram of April 18 that the steamer UNITED STATES of the Scandinavian-American Line was expected to sail from Copenhagen on April 19.

Under the present arrangement with the Treasury Department, passports of American citizens entering this country are taken up by custom officers. It is deemed important to examine each and every alien entering the United States carefully, in order to ascertain not only his nationality, but also his object in coming to the United States

and the places in this country where he expects to reside. So far as immigrants are concerned, such an examination is understood to be made by officials of the immigration service. However, it seems probable that numerous aliens will come to this country who do not belong to the immigrant class. It also occurs to this Department that agents of the German Government may attempt to enter the United States in the guise of immigrants. Furthermore, it is possible that such persons may attempt to enter this country as American citizens, bearing forged American passports or American passports fraudulently procured. It is respectfully suggested that you make an arrangement under which special agents of the Department of Justice may cooperate with officials of the customs service in connection with the examination of passengers on the BERGENSFJORD and other vessels arriving in the United States from foreign ports, particularly Scandinavian ports. It is also suggested that arrangements be made under which special agents of the Department of Justice may cooperate with officials of the customs service in examining persons leaving ports of the United States, especially those sailing for Scandinavian ports. In this connection it may be observed that officers of the Scandinavian lines do not require persons sailing on their vessels to carry passports.

I have the honor to be, Sir,

Your obedient servant,

For the Secretary of State:

(Sgd.) FRANK L. POLK,

Counselor.

138./472.
CB/RWF/OFS.

REH:AEK

Address reply to Department of Justice, "The Attorney General," and refer to initials and number

WASHINGTON, D. C.,
April 27, 1917.

The Honorable, The SECRETARY OF STATE,
Department of State.

SIR: I have the honor to acknowledge the receipt of your letter of the 25th instant, regarding the desire of your Department that alien passengers on the steamship "Bergensfjord" which sailed from Bergen April 16, 1917, to the United States, and those on other vessels coming in from Scandinavian ports, be subject to careful examination in order to ascertain not only their nationality but their object in coming to the United States and the place in this Country, where each expects to reside.

The New York office of the Bureau of Investigation of this Department has been instructed thoroughly in the premises and it will cooperate in this respect with the Customs and Immigration officials in order to avoid duplication of work.

Respectfully.

For the Attorney General:

(Sgd.) CHARLES WARREN,
Assistant Attorney General.

DEPARTMENT OF LABOR,
OFFICE OF THE ASSISTANT SECRETARY,
Washington, May 1, 1917.

54261/152

The Honorable, The SECRETARY OF STATE.

SIR: This Department has received today, under cover of a communication from the Secretary of

Commerce, a copy of your letter of April 25th (138./472-CB/RWF/OFS), in which you request that special agents of the Department of Justice cooperate with officials of the Customs Service in connection with the examination of passengers expected soon to arrive on the S. S. "Bergensfjord" of the Norwegian-American Line, and point out that you understand an examination is made of immigrants by officials of the Immigration Service, but that it is probable that numerous aliens will arrive who do not belong to the immigrant class—this apparently being the reason for requesting that officials of the Department of Justice assist the Customs officers in conducting the examination.

A copy of your letter is being forwarded to the Commissioner of Immigration at New York with instructions to take such measures as he deems proper to insure that all alien passengers arriving by the SS "Bergensfjord" are subjected to an especially careful examination under the terms of the immigration law. It is hoped that these instructions may reach the Commissioner in time to effect the purpose which you have in view. Of course, so far as American citizens are concerned, the authority of the immigration officials is limited to holding them for such length of time as may be necessary in order to ascertain beyond peradventure of doubt that they are not aliens; but this authority can usually be exercised in such a way as to protect every interest of the Government.

In connection with this case, permit me to call attention to the fact that the immigration law of the United States was changed as long ago as 1903 to apply to all aliens, without regard to any classi-

fication of them as immigrants; and since that date the immigration officials have not only had authority to examine aliens without regard to the class in which they travel or whether they are coming for permanent or temporary purposes or are merely passing through the country in transit to other countries, but it has been the duty of such officers to conduct examinations in all such cases.

If the Department of State will promptly bring to the attention of this Department all instances in any degree resembling that described in that Department's letter of April 25th to the Attorney General, instructions will immediately be given that will insure that all passengers are subjected to a proper examination under the immigration law and that every passenger claiming American citizenship with regard to whose claim there is any doubt is held until such doubt has been clearly and completely removed from the case. Of course, to the full extent that it is necessary or advisable to permit either Customs officers or officers of the Department of Justice to cooperate or to participate in the handling of any cases, the immigration officials will permit such cooperation or participation in such manner as to prevent duality or confusion of authority and at the same time effect the objects in view.

Respectfully,

(Sgd.) LOUIS F. POST,
Assistant Secretary.

AWI/EJS.

U. S. GOVERNMENT PRINTING OFFICE: 1941

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SUPREME COURT OF THE UNITED STATES.

No. 287.—October Term, 1940.

Earl Russell Browder, Petitioner, vs. The United States of America. } On Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

[February 17, 1941.]

Mr. Justice Reed delivered the opinion of the Court.

The question is whether the use by an American citizen of a passport obtained by false statements to facilitate reentry into the United States is a "use" within section 2 of the Passport Title of the Act of June 15, 1917,[1] and, if so, whether petitioner was properly convicted of a "willful" use. We brought the case here because of its importance in the administration of the passport laws.

Section 2 provides that whoever shall either make a false statement in an application for a passport or "shall willfully and knowingly use . . . any passport the issue of which was secured in any way by reason of any false statement, shall be fined not more than $2,000 or imprisoned not more than five years or both." The indictment in two counts charged that petitioner, having secured a passport by a false statement, willfully and knowingly used it on April 30, 1937, and again on February 15, 1938, each time by presenting it to an immigration inspector to gain entry into the United States. The proof showed that petitioner, a native-born American citizen, had in 1921, 1927 and 1931 obtained passports

[1] 40 Stat. 217, 227, Title IX:

"Sec. 2. Whoever shall willfully and knowingly make any false statement in an application for passport with intent to induce or secure the issuance of a passport under the authority of the United States, either for his own use or the use of another, contrary to the laws regulating the issuance of passports or the rules prescribed pursuant to such laws, or whoever shall willfully and knowingly use or attempt to use, or furnish to another for use, any passport the issue of which was secured in any way by reason of any false statement, shall be fined not more than $2,000 or imprisoned not more than five years or both."

By the Act of March 28, 1940, the maximum term of imprisonment under this section was increased to ten years. 54 Stat. 80.

under different assumed names by means of false statements. In 1934 petitioner applied for a passport in his own name. The application blank contained the clause: "My last passport was obtained from _____ and is submitted herewith for cancellation." Despite the three passports previously issued to him, petitioner wrote "none" in the blank space, then signed the application and swore to the truth of its contents. The Government issued him a passport which was later extended upon a renewal application until September 1, 1938. Returning from Europe in April, 1937, and again in February, 1938, petitioner showed his passport to an inspector to identify himself and establish his citizenship and consequent right to reenter the United States. The jury convicted him on both counts for willfully using a passport secured by a false statement, and the District Court sentenced him to two years' imprisonment and a fine of $1,000 on each count, the terms to run consecutively. The Circuit Court of Appeals affirmed.[2] At the time of the indictment, the statute of limitations had run on the obtaining of the passport by a false statement (18 U. S. C. § 582).

Petitioner contends that the indictment is for the "use" "of a passport as truthful proof of his Kansas birth." Since the "use" to prove an admitted fact—his American citizenship—was innocent, it is urged, no statutory prohibition was violated. The indictment, however, charges that petitioner "used . . . a passport . . . the issue of which he secured by reason of a false statement . . . in the application therefor." The language of the indictment conforms to the definition of the offense in the statute, as the use of "any passport the issue of which was secured in any way by reason of any false statement." The balanced form of section 2, quoted above at note 1, shows that the Congress viewed with concern and punished with equal severity the securing of passports by false statements and their use. The crimes denounced are not the securing or the use but either of such actions made criminal only by the false statements in the procurement of the passport. If the misrepresentation is withdrawn nothing culpable remains in the use. A condemned use of a passport secured by the fraud seems obviously within the act.

A more difficult issue emerges from petitioner's assertion that the use proven here is not the kind of use covered by the statute. He

[2] 113 F. (2d) 97.

finds the prohibitions directed against "dishonest uses of the safe-conduct of the United States in foreign relations." Such use must be "willful and knowing," an expression said to bear the connotation of evil or dishonest. Attention is called to alleged passport frauds of about the time of the passage of the passport sections and to the recommendation of the Attorney General that Congress pass legislation against the fraudulent use of passports.[3] These are brought forward as indicative of the purpose of Congress to punish fraudulent uses or those uses abroad which would involve misuse of the privilege, under international law, of traveling through foreign countries.

It is quite true that passports are used chiefly in foreign travel. There is no limitation, however, to that field and surely the close connection between foreign travel and reentry to this country is obvious. The plain meaning of the words of the act covers this use. No single argument has more weight in statutory interpretation than this.[4] Nothing in the legislative history is brought to our attention which indicates any other purpose in Congress than that expressed by the words of the act. The final form of the enactment did not vary in this particular portion from the bill originally introduced.[5] The Government does not urge that every use of a fraudulent passport is violative of the act but only those "uses in connection with travel which are a part of the ordinary incentives for obtaining passports." Certainly the use to prove citizenship on reentry to the country is within the ordinary incentives.[6] It is entirely clear from the record that passports were customarily used to prove the bearer's citizenship on reentry into the United States at the time of this alleged offense. The use of a passport for reentry is now routine, although neither at the time of the passage of the

[3] Report of the Attorney General (1916), p. 17.

[4] United States *v.* American Trucking Association, 310 U. S. 534, 543.

[5] H. R. 291, 65th Cong.

[6] Since 1929, the State Department has carried substantially the following suggestion in its "Notice to Bearers of Passports": "22. An American citizen leaving the United States for a country where passports are not required is nevertheless advised to carry a passport, except in travel to Canada or Mexico. The passport may later save the time and inconvenience of applying for one abroad should the holder desire to travel in countries where passports are required. It will also enable the holder to establish his American citizenship upon his return to the United States and thus facilitate his entry. American citizens who leave the United States without passports should carry with them proof of their citizenship, such as birth, baptism, or naturalization certificates."

act nor at present are passports required of citizens on reentry. Our conclusion is not weakened by the fact that the Act of May 22, 1918,[7] which required citizens to use passports to depart from or enter the United States, was permitted to expire after the war emergency. While passports no longer were required for reentry, their use for that purpose afterwards became both convenient and customary.

The fact that at the time of the passage of the act, passports were not customarily used by citizens to assure easy reentry is brought forward by petitioner to support the argument that Congress did not intend to punish uses such as the one charged here. There is nothing in the legislative history to indicate that Congress considered the question of use by returning citizens. Old crimes, however, may be committed under new conditions. Old laws apply to changed situations.[8] The reach of the act is not sustained or opposed by the fact that it is sought to bring new situations under its terms.[9] While a statute speaks from its enactment, even a criminal statute embraces everything which subsequently falls within its scope.[10] The use here charged under these tests was clearly within the scope of the act. The purpose of this act was to punish the use of passports obtained by false statements.

There is the further contention that the Government's construction of the word "use" would make criminal, under other sections of the act, the presentation of expired passports for the purpose of identifying citizens returning from Mexico, Bermuda and Canada. Petitioner urges that such uses, though frequent and apparently acquiesced in by the authorities, would then violate section 3, which prohibits a use "in violation of the conditions or restrictions therein contained," and also section 4, which prohibits the use of a passport "validly issued which has become void by the occurrence of any condition therein prescribed invalidating the same." The question of the meaning of other sections is not before us. Considered solely from the standpoint of their analogy to section 2, the

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7 40 Stat. 559.

8 Cf. Cain *v.* Bowlby, 114 F. (2d) 519, 522, and cases and instances there cited; Maxwell, Interpretation of Statutes, (7th ed. 1929) pp. 69-70.

9 Newman *v.* Arthur, 109 U. S. 132, 138; Pickhardt *v.* Merritt, 132 U. S. 252, 257; DeLima *v.* Bidwell, 182 U. S. 1, 197.

10 State *v.* Butler, 42 N. M. 271, 274; Commonwealth *v.* Tilley, 28 N. E. (2d) 245 (Mass.); People *v.* Hines, 284 N. Y. 93, 104.

use of expired passports to identify the holder seems entirely different from the use of a passport obtained by false statements. The vice in the latter is congenital. Its willful use is prohibited.

Petitioner points out, however, that the use must be "willfully and knowingly." In his view this means a use which is dishonest in addition to or apart from the dishonesty in obtaining the passport, and which is in itself evil "as the use of a passport to invoke fraudulently the protection of the United States abroad." Further it is said this evil must be the kind of evil within the spirit and intendment of the act. But the statute plainly does not purport to punish fraudulent or dishonest use other than such as is involved in the use of a passport dishonestly obtained. None of its words suggest that fraudulent use is an element of the crime. The statute is aimed at the protection of the integrity of United States passports. It penalizes both procuring the passport by a false statement and its use when so procured. The crime of "use" is complete when the passport so obtained is used willfully and knowingly.

Read in its context the phrase "willfully and knowingly," as the trial court charged the jury, can be taken only as meaning "deliberately and with knowledge and not something which is merely careless or negligent or inadvertent." No exception was taken to this instruction. The point at issue arises because a motion was denied to dismiss the indictment on the ground that "the government's case is fatally defective in that it lacks the main essential ingredient of the entire case; namely, the criminal intent of the defendant at the time of the alleged act"; that there is "no proof that there was a knowing and willful use to gain entry." Petitioner relies upon *United States* v. *Murdock*.[11] That case affirmed a reversal of conviction for a violation of section 1114(a) of the Revenue Act of 1926 and a like section of the 1928 act. These sections made it a misdemeanor for a taxpayer to "willfully" fail to supply information in regard to income. The taxpayer refused the information on the ground of privilege from fear of self-incrimination. At the time the law upon the point was uncertain. This reasonable fear, this Court held, entitled the taxpayer to requested instruction on his good faith in refusing to answer. This claim of constitutional right is quite different from the claim here of a right to use a passport obtained by false representation, contrary to the express words of the statute,

[11] 290 U. S. 389, 394.

because there was no ulterior evil purpose in mind. The *Murdock* opinion recognizes, p. 394, that the word "wiliful" often denotes an intentional as distinguished from an accidental act. Once the basic wrong under this passport statute is completed, that is the securing of a passport by a false statement, any intentional use of that passport in travel is punishable.

Other suggestions as a basis for reversal are made. These do not require particular comment.

Affirmed.

Mr. Justice MURPHY took no part in the consideration or decision of this case.

A true copy.

Test:

Clerk, Supreme Court, U. S.